

**2003 DRAFTING REQUEST****Assembly Amendment (AA-AB514)**Received: **10/28/2003**Received By: **rnelson2**Wanted: **Today**

Identical to LRB:

For: **Scott Gunderson (608) 266-3363**By/Representing: **Mark P**This file may be shown to any legislator: **NO**Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - boats snomos ATVs**Extra Copies: **Mark Patronsky, LC**Submit via email: **YES**Requester's email: **Rep.Gunderson@legis.state.wi.us**Carbon copy (CC:) to: **mark.patronskey@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Boating provision minor changes

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rnelson2	jdye	jfrantze	_____	lemery	lemery	
	10/28/2003	10/28/2003	10/28/2003	_____	10/28/2003	10/28/2003	
		jdye		_____			
		10/28/2003		_____			

FE Sent For:

10/28/2003 09:35:52 AM

Page 1

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/1	rnelson2	1/10/28 jcd	J 10/27	J/ch 10/27			

FE Sent For:

&lt;END&gt;



27ab514 - mcp

## WISCONSIN LEGISLATIVE COUNCIL

Tue 1 PM

Terry C. Anderson, Director  
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE SCOTT GUNDERSON  
FROM: Mark C. Patronsky, Senior Staff Attorney CC  
RE: DNR Comments on Boating Provisions of 2003 Assembly Bill 514  
DATE: October 27, 2003

Look at  
a attached  
Lutz

This memorandum contains responses to comments on 2003 Assembly Bill 514 by Mike Lutz of the Department of Natural Resources (DNR) staff (copy attached). I will provide a copy of this memorandum to the Legislative Reference Bureau (LRB) so that a technical amendment can be prepared as necessary.

### Page 39, SEC. 123

no change

Current s. 30.15 (title) is "Penalty for unlawful obstruction of navigable waters." This title is repealed on line 39, line 4, and a new title is created on page 132, lines 15 and 16, "Penalties."

The title of current s. 30.15 (1) is "Obstructions penalized." This title is renumbered as s. 30.98 (title) and amended to read "Obstructions." The remainder of the contents of s. 30.15 (1) is also renumbered as s. 30.98 (1).

There does not appear to be a problem with this treatment of s. 30.15.

p 107, line 4  
where is (c) (intro)

Page 106, SEC. 335

change

I agree with this comment. It is an unintended change from the study committee's draft.

Page 108, SEC. 339

change

I agree that the diver's flag should be a minimum size. The current statute provides that the flag is a minimum size, and the Special Committee omitted that provision on page 91, line 4 of WLC: 0243/1. The Special Committee did not discuss or request this change, and I believe it should be returned to the current statutory text.

p 107, line 3  
not less than goes  
on L. 4

Page 110, SEC. 345

change

The erroneous reference to s. 30.975 occurred in WLC: 0243/1. The reference should be to s. 30.86. In Assembly Bill 514, current s. 30.294 is renumbered s. 30.86 (see page 70, line 8 of Assembly Bill 514).

Line 3 and Mark will bring down sp.  
Comm. requested  
language they want!

Page 112, SEC. 349

change

Assembly Bill 514 differs from the provision approved by the Special Committee. The changes made LRB do not appear to be consistent with the Special Committee's intent.

Page 117, SEC. 349

change

may not be "strict conformity", instead "consistency"  
p 117, l. 19, chg. (b) to (c)

I agree that the strict conformity and consistency requirements are incorrect in Assembly Bill 514. This error occurred in WLC: 0243/1, at page 102, line 4 and was carried into the LRB draft.

Page 132, SEC. 370

no change

The penalty provision in s. 30.98 is intended to include the penalties that apply chapter-wide. Its contents will be as follows:

s. 30.15 (1), renumbered s. 30.98 (1)

s. 30.15 (3), renumbered s. 30.98 (2)

s. 30.28 (4), renumbered s. 30.98 (3)

There will also be separate penalty provisions in ch. II and in s. 30.28.

MCP:wu:tlv

DATE: October 27, 2003

TO: Mark Patronsky – Legislative Council

FROM: Michael A. Lutz – LS/5  
John Lacenski – LE/5

SUBJECT: Department comments on the boating provisions of 2003 Assembly Bill 514

We have reviewed the boating provisions of 2003 Assembly Bill 514. Comments on the water regulation provisions will come from other Department staff. We trust that you will notify us if our comments should be directed elsewhere. We will identify the sections we are commenting on by page and section number. Our comments follow.

**Page 39 – Section 123**

There appears to be an inconsistency between this section and page 132. Section 123 is titled Obstruction. On page 132 section 30.15 (1) is titled Penalty. We do not read s. 30.15 as containing penalties.

**Page 106 – Section 335**

We believe that 30.69 (1) (b)3 should be part of s. 30.69 (1) (a). The reference to personal watercraft engaged in towing a water skier is meant to be an additional prohibition applicable to personal watercraft and it is not intended as an exemption. As written, it exempts personal watercraft from the observer requirement and from nighttime skiing restrictions.

**Page 108 – Section 339**

The reference to diver's flags in 30.70 (2) should be to flags not less than 12 inches high. It is not necessary that the flags be exactly 12 inches high and 15 inches long.

**Page 110 – Section 345**

On line 16 s. 30.74 (2) (bm) contains a reference to s. 30.975. We cannot locate s. 30.975 anywhere in the draft.

**Page 112 – Section 349**

On lines 3 and 4 the proposal states that the Department shall consult with and assist local units of government in enacting and enforcing ordinances that meet the requirements of this section. In WLC 0243/1, the agreed upon language was that the Department would consult with and provide assistance to a local unit of government in the process of enacting and local enforcement of ordinances. The language in the bill now requires that the Department enforce local ordinances. Given available Department resources, this requirement is unrealistic. It could also result in a loss of local efforts to enforce their own ordinances. It remains the Department's view that its efforts are best focused on



enforcing statewide regulations with a primary emphasis on boating safety.

**Page 117 – Section 349**

At lines 18 and 19, there is a statement that ordinances that require strict conformity under par. (b) include those that relate to “any of the following”, with a list of things such as restrictions on speed, restrictions on certain types of boating activities, etc. This list is currently the type of ordinances that are authorized under local authority. It was never intended to require strict adherence to state law on these topics. The cross-reference to par. (b) should be changed to par. (5) (c).

**Page 132 – Section 370**

Here is created a section 30.98 dealing with penalties. What will this contain? The current penalty section in s. 30.80 seems to remain intact. Similarly, subchapter 2 dealing with water regulation also still contains its own penalty section.

cc: Bill Engfer – LE/5  
Paul Heinen – AD/5

NOTE: SECTION 30.5005 (1) (b), as created by this draft, provides that a reference to a statute in any of the boating statutes also includes the rules promulgated under that statute. Thus, "state regulation" includes the department of natural resources (DNR) boating rules.

1           (2) LOCAL REGULATION PROHIBITED; EXCEPTION. State regulations shall be uniform in  
2 operation throughout the state. No local governmental unit may enact an ordinance on any  
3 matter pertaining to a state regulation except as authorized under this section, or under another  
4 statute that by its express terms permits enactment of an ordinance by a local governmental  
5 unit notwithstanding this section.

NOTE: This first part of this subsection restates current law. See current s. 30.77 (1). The purpose of this provision is to establish the policy that state boating laws are intended to be uniform, and that the authorization of local regulation is within the context of this uniformity.

The provision regarding statutory authority other than s. 30.77 is new and states expressly what is the apparent intent of s. 30.77, that this statute is the exclusive authority for local regulation of boating equipment and operations, as well as other matters subject to regulation under this section, unless specific authority is provided elsewhere in the statutes.

6           (3) DUTIES OF THE DEPARTMENT. (a) *Assistance*. The department shall draft and  
7 ~~disseminate model ordinances that meet the requirements of this section.~~ The department  
8 shall consult with and provide assistance to a local governmental unit in the process of  
9 enacting and local enforcement of ordinances.

10           (b) *Review of ordinances*. The department shall review ordinances as provided under  
11 sub. (10).

12           (4) JURISDICTION OF LOCAL GOVERNMENTAL UNITS. (a) *Towns, villages and cities; waters*  
13 *of this state*. 1. A town, village or city that has the entire shoreline of an inland lake within  
14 its boundaries may enact ordinances applicable to that lake.



30.77

3. The degree to which boating traffic on the body of water affects other recreational uses and the public's health, safety and welfare, including the public's interest in preserving the state's natural resources.

(f) *Specific ordinances authorized.* Ordinances authorized under par. (b) include:

1. Restrictions on speed.
2. Restrictions on certain types of boating activities on all, or on specified parts, of the lake or stream.
3. Restrictions on certain types of boating activities during specified hours of the day or specified days of the week.
4. Regulation of the operation, equipment, use and inspection of boats carrying passengers for hire that operate from a base within the jurisdiction of the local governmental unit, including reasonable fees for the inspections.
5. Reasonable fees for use of a public boat launching facility that the local governmental unit owns or operates.
6. Reasonable fees for the local governmental unit's costs for operating or maintaining a water safety patrol unit, as defined in s. 30.79 (1) (b) 2.
7. Reasonable fees for the local governmental unit's costs for providing other recreational boating services.

NOTE: The provision regarding fees for "other recreational boating services" retains current law. The special committee discussed the possibility of repealing or modifying this provision, but decided against making changes. The special committee acknowledges that although the current statute authorizes "reasonable" fees, a fee related to boating that might be reasonable for purposes of the police power may nevertheless exceed the bounds of the ~~police power~~ in navigable waters under art. IX, s. 1, Wis. const. However, the special committee concluded that local governments should have the opportunity to impose reasonable fees that

should have been (c)

OK

**30.687 Officer's action after arrest for violating intoxicated boating law.** A person arrested for a violation of the intoxicated boating law, may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 30.684 (1) (a) shows that the person has an alcohol concentration of 0.05 or less, but the person may be released to his or her attorney, spouse, relative or other responsible adult at any time after arrest.

History: 1985 a. 331; 1995 a. 436.

**30.69 Water skiing. (1) PROHIBITED AT CERTAIN TIMES; EXCEPTIONS.** (a) Except as provided in par. (b), no person may operate a motorboat towing a person on water skis, aquaplane or similar device unless there is in the boat a competent person in addition to the operator in a position to observe the progress of the person being towed. An observer shall be considered competent if that person can in fact observe the person being towed and relay any signals to the operator. This observer requirement does not apply to motorboats classified as Class A motorboats by the department actually operated by the persons being towed and so constructed as to be incapable of carrying the operator in or on the motorboat. No person may engage in water skiing, aquaplaning or similar activity, at any time from sunset to sunrise. This restriction of the hours of water skiing does not prevent restrictions of the hours of water skiing between sunrise and sunset by local ordinances enacted pursuant to s. 30.77 (3).

(b) Paragraph (a) does not apply to duly authorized water ski tournaments, competitions, exhibitions or trials therefor, where adequate lighting is provided.

(c) In addition to complying with par. (a), no person may operate a personal watercraft that is towing a person who is on water skis, an aquaplane or similar device unless the personal watercraft is designed to seat at least 3 persons.

**(2) CAREFUL AND PRUDENT OPERATION.** A person operating a motorboat having in tow a person on water skis, aquaplane or similar device shall operate such boat in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

**(3) RESTRICTIONS.** (a) No person operating a motorboat that is towing persons engaged in water skiing, aquaplaning or similar activity may operate the motorboat within 100 feet of any occupied anchored boat, any personal watercraft or any marked swimming area or public boat landing.

(b) No person who is engaged in water skiing, aquaplaning or similar activity may get within 100 feet of a personal watercraft or allow the tow rope while in use to get within 100 feet of a personal watercraft.

(c) No person may operate a personal watercraft within 100 feet of any of the following:

1. A motorboat towing a person who is engaged in water skiing, aquaplaning or similar activity.

2. The tow rope of a motorboat towing a person who is engaged in water skiing, aquaplaning or similar activity.

3. A person who is engaged in water skiing, aquaplaning or similar activity.

(d) Paragraphs (a) to (c) do not apply to pickup or drop areas that are marked with regulatory markers and that are open to operators of personal watercraft and to persons and motorboats engaged in water skiing.

**(4) INTOXICATED OPERATION.** No person may use water skis, an aquaplane or a similar device while under the influence of an intoxicant to a degree which renders him or her incapable of safely using water skis, an aquaplane or a similar device, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely using water skis, an aquaplane or a similar device.

History: 1973 c. 302; 1985 a. 331; 1991 a. 257, 315, 316; 1993 a. 437.

**30.70 Skin diving.** No person may engage in underwater diving or swimming with the use of swimming fins or skin diving in waters other than marked swimming areas or within 150 feet of shoreline, and no person may engage in underwater diving or swimming with the use of self-contained underwater breathing apparatus in waters other than marked swimming areas, unless the location of such diving or swimming is distinctly marked by diver's flag, not less than 12 inches high and 15 inches long, displaying one diagonal white stripe 3 inches wide on a red background, and of height above the water so as to be clearly apparent at a distance of 100 yards under normal conditions, and so designed and displayed as to be visible from any point on the horizon. Except in case of emergency, anyone engaging in such diving or swimming shall not rise to the surface outside of a radius of 50 feet from such flag. No person engaged in such diving or swimming shall interfere with the operation of anyone fishing nor engage in such diving or swimming in established traffic lanes; nor shall any such person alone or with another, intentionally or unintentionally, block or obstruct any boat in any manner from proceeding to its destination where a reasonable alternative is unavailable. A reasonable alternative route is available when the otherwise unobstructed boat can proceed to its destination without reducing its lawful speed, by passing to the right or to the left of a marked diving operation.

History: 1973 c. 302.

**30.71 Disposal of waste from boats equipped with toilets. (1)** In this section, "outlying waters" has the meaning given in s. 29.001 (63).

(2) No person may, while maintaining or operating any boat equipped with toilets on the waters of this state, dispose of any toilet wastes in any manner into the water.

(3) No person may operate for compensation or reward an establishment that has the capacity of providing berths or moorings to 5 or more boats that are equipped with toilets and that is located on an outlying water of this state unless the establishment provides adequate fixed onshore disposal facilities for disposal of toilet wastes from the boats for which the establishment provides berths or moorings. If the establishment is unable to provide fixed onshore disposal facilities due to problems of accessibility to the boats, the establishment shall provide adequate portable disposal facilities for these toilet wastes.

(4) Any rules necessary to carry out the purposes of this section shall be promulgated jointly by the department of commerce and the department of natural resources.

History: 1977 c. 395; 1979 c. 221; 1983 a. 27 s. 2202 (38); 1985 a. 332 s. 251 (1); 1995 a. 27 ss. 1691, 9116 (5); 1997 a. 248, 330; 1999 a. 32.

The Mississippi River is an inland water of Wisconsin. The boat toilet law may be enforced on the entire width of the river bordering Minnesota and up to the center of the main channel bordering Iowa. 61 Atty. Gen. 167.

**30.715 Placement of boats, trailers, and equipment in navigable waters. (1)** In this section:

(a) "Aquatic plant" means a submergent, emergent, or floating-leaf plant or any part thereof. "Aquatic plant" does not mean wild rice.

(b) "Public boat access site" means a site that provides access to a navigable water for boats and that is open to the general public for free or for a charge or that is open only to certain groups of persons for a charge.

(2) No person may place or use a boat or boating equipment or place a boat trailer in a navigable water if the person has reason to believe that the boat, boat trailer, or boating equipment has any aquatic plants attached.

(3) No person may place or use a boat or boating equipment or place a boat trailer in the Lower St. Croix River if the person has reason to believe that the boat, boat trailer or boating equipment has zebra mussels attached.

30.69 (title) Water skiing and similar activities.

SECTION 330. 30.69 (1) (title) of the statutes is amended to read:

30.69 (1) (title) ~~PROHIBITED AT CERTAIN TIMES~~ PROHIBITIONS; EXCEPTIONS.

SECTION 331. 30.69 (1) (a) of the statutes is renumbered 30.69 (1) (a) (intro.) and amended to read:

30.69 (1) (a) (intro.) ~~Except as provided in par. (b), no~~ No person may operate do any of the following:

1. Operate a motorboat towing a person on engaged in water skis, aquaplane or skiing or a similar device activity unless there is in the boat a competent person in addition to the operator ~~in a position to observe the progress of the person being towed. An observer shall be considered competent if that person who is in a position to observe, and can in fact observe, the person being towed and relay any signals to the operator. This observer requirement does not apply to motorboats classified as Class A motorboats by the department actually operated by the persons being towed~~

~~and so constructed as to be incapable of carrying the operator in or on the motorboat.~~

~~No person may engage~~

2. Engage in water skiing, aquaplaning or a similar activity, or operate a motorboat towing a person engaged in water skiing or a similar activity, at any time from sunset to sunrise. This restriction of the hours of water skiing does not prevent restrictions of the hours of water skiing between sunrise and sunset by local ordinances enacted pursuant to s. 30.77 (3).

NOTE: The reference to local ordinances is eliminated, and all provisions related to local ordinances will be consolidated in s. 30.77. It is proposed to expand this prohibition to apply to the motorboat operator as well as to the person engaged in water skiing or a similar activity.

→ MOVE SEC 335 to here.

8 SECTION 332. 30.69 (1) (b) of the statutes is renumbered 30.69 (1) (b) (intro.)  
9 and amended to read:

10 30.69 (1) (b) (intro.) Paragraph (a) 1. does not apply to ~~duly authorized water~~  
11 any of the following:

12 1. Water ski tournaments, competitions, exhibitions or trials therefor, where  
13 adequate lighting is provided, or practice sessions that are authorized by a permit  
14 from a local governmental unit that enacts an ordinance under s. 30.77.

NOTE: The reference to "duly authorized" water ski tournaments and other activities is unclear. A specific reference to authorization by means of a permit from a local governmental unit that adopts ordinances under s. 30.77 is substituted for that phrase.

"Practice sessions" is substituted for "trials". The meaning of "trials" is not clear, although one sense of that word is a preliminary competition. The special committee believes that the exemption from the observer requirement is widely understood to apply to all activities related to organized water ski activities, including practice sessions, and that the broader exemption from the observer requirement is appropriate, so the statute is redrafted accordingly.

Current s. 30.69 (1) (a) commences with "Except as provided in par. (b)". That provision is recreated above in s. 30.69 (1) (c), with the omission of the reference to the provision of adequate lighting. It appears to be the intent of the current statute that the observer requirement does not apply to water ski tournaments, competitions, exhibitions or practice sessions under any circumstances.

15 SECTION 333. 30.69 (1) (b) 2. of the statutes is created to read:

1 30.69 (1) (b) 2. Motorboats less than 16 feet long that are operated by the person  
2 being towed and that are so constructed as to be incapable of carrying the operator  
3 in or on the motorboat.

9 SECTION 335. 30.69 (1) (c) of the statutes is renumbered 30.69 (1) (b) 3. and  
10 amended to read:

11 30.69 (1) (b) 3. <sup>(a)</sup> ~~In addition to complying with par. (a), no person may operate~~  
12 ~~a~~ A personal watercraft that is towing a person who is on engaged in water skis, an  
13 aquaplane skiing or a similar device activity unless the personal watercraft is  
14 designed to seat at least 3 persons.

4 SECTION 334. 30.69 (1) (bm) of the statutes is created to read:

5 30.69 (1) (bm) Paragraph (a) 2. does not apply to water ski tournaments,  
6 competitions, exhibitions, or practice sessions that are conducted under a permit  
7 from a local governmental unit that enacts an ordinance under s. 30.77 and for which  
8 adequate lighting is provided.

15 SECTION 336. 30.69 (2) of the statutes is amended to read:

16 30.69 (2) CAREFUL AND PRUDENT OPERATION. A person operating a motorboat  
17 having in tow a person ~~on water skis, aquaplane or engaged in water skiing or a~~  
18 similar device activity shall operate such boat the motorboat in a careful and prudent  
19 manner and at a reasonable distance from persons and property so as not to  
20 endanger the life or property of any person.

21 SECTION 337. 30.69 (3) of the statutes is amended to read:

22 30.69 (3) RESTRICTIONS. (a) No person operating a motorboat that is towing  
23 persons a person engaged in water skiing, ~~aquaplaning~~ or a similar activity may  
24 operate the motorboat within 100 feet of any occupied, anchored boat, any personal  
25 watercraft, or any marked swimming area or public boat landing.

## BILL

(b) No person who is engaged in water skiing, aquaplaning or a similar activity may get come within 100 feet of a personal watercraft or allow the tow rope while in use to get come within 100 feet of a personal watercraft.

N (c) <sup>swimming into</sup> 1. A motorboat towing a person who is engaged in water skiing, aquaplaning or a similar activity.

2. The tow rope of a motorboat towing a person who is engaged in water skiing, aquaplaning or a similar activity.

3. A person who is engaged in water skiing, aquaplaning or a similar activity.

(d) Paragraphs (a) to (c) do not apply to pickup or drop areas that are marked with regulatory markers and that are open to operators of personal watercraft and to persons and motorboats engaged in water skiing or a similar activity.

SECTION 338. 30.69 (4) of the statutes is amended to read:

30.69 (4) INTOXICATED OPERATION. No person may use engage in water skis, an aquaplane skiing or a similar device activity while under the influence of an intoxicant to a degree which renders him or her incapable of safely using engaging in water skis, an aquaplane skiing or a similar device activity, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely using engaging in water skis, an aquaplane skiing or a similar device activity.

~~SECTION 339. 30.70 of the statutes is renumbered 30.70 (1) and amended to read:~~

~~30.70 (1) No person may engage in underwater diving or swimming with the use of swimming fins or skin diving in waters other than marked swimming areas or within 150 feet of the shoreline, and no unless the location of the swimming or diving is marked by a diver's flag. No person may engage in underwater diving or~~



*Now*  
State of Wisconsin  
2003 - 2004 LEGISLATURE

LRBa1547/1  
RPN&RNK.....  
*λ*  
*jd*

ASSEMBLY AMENDMENT,  
TO 2003 ASSEMBLY BILL 514

# Page 106, line 21: delete that line and substitute:  
"SECTION 337m. 30.69(3)(a), (b), (c) 1., 2. and  
3. and (d) of the statutes are amended to  
read:"  
# Page 106, line 22: delete "RESTRICTIONS."

*CS*

1 At the locations indicated, amend the bill as follows:

2 1. Page 106, line 9: delete "(b)" and substitute "(a)".

3 2. Page 106, line 11: delete "(b)" and substitute "(a)".

4 3. Page 106, line 12: delete "a A" and substitute "Operate a".

5 4. Page 107, line 3: after that line insert:

6 "(c) No person may operate a personal watercraft within 100 feet of any of the  
7 following:"

8 SECTION ?? 30.69 (3) (c) (intro.) of the statutes is amended to read:

9 30.69 (3) (c) (intro.) No person may operate a personal watercraft within 100  
10 feet of any of the following:

History: 1973 c. 302; 1985 a. 331; 1991 a. 257, 315, 316; 1993 a. 437.

11 5. Page 107, line 4: delete "(c)".

12

6. Page 108, line 3: delete "not less than".

*This is where I*

*LOTTA*

7. Page 108, line 4: after “is” insert “not less than”.
8. Page 110, line 16: delete “s. 30.975” and substitute “s. 30.86”.
9. Page 112, line 3: delete that line and substitute “department shall consult with and provide assistance to a local governmental unit in the process of enacting and”.
10. Page 117, line 18: delete “strict conformity” and substitute “consistency”.
11. Page 117, line 19: delete “(b)” and substitute “(c)”.

**(END)**